

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRONTIER AIRLINES, INC,

Plaintiff,

vs.

Case No.:
1:20-CV-09713-
LLS

AMCK AVIATION HOLDINGS IRELAND
LIMITED, ACCIPITER INVESTMENT 4
LIMITED, VERMILLION AVIATION
(TWO) LIMITED, WELLS FARGO TRUST
COMPANY, N.A., solely in its
capacity as OWNER TRUSTEE, and
UMB BANK, N.A., solely in its
capacity as OWNER TRUSTEE,
Defendants.

April 1, 2022
10:00 a.m. CDT

Remote video-teleconference deposition of
SHARATH SASHIKUMAR BINDU, taken by Defendants, held
at Peoria, Illinois, pursuant to notice, before
Elizabeth F. Tobin, a Registered Professional
Reporter and Notary Public of the State of New
York.
JOB NO. 5155647

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A P P E A R A N C E S:

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(via video-teleconference)

1 S. Sashikumar Bindu

2 were also negotiating with Airbus after this point
3 in time.

4 Q. Did anyone at Frontier instruct you not
5 to make payments to AMCK after April 21st, 2020?

6 A. I can't recall.

7 Q. Did you make any change to your tracker
8 to reflect an extension of rent payments during
9 April 2020?

10 A. No. There was an assumption on the
11 deferral because we had to generate a separate file
12 that would account for deferred rent between all of
13 our lessors. So there was another tracker that was
14 keeping track of normal payments but also what
15 deferrals would look like and what the repayment
16 period was, which is what we were negotiating with,
17 with all of our lessors at the time.

18 Q. Just to make sure I understand, you said
19 you did not update your lease file tracker document,
20 but you referenced another document that tracked
21 deferrals?

22 A. We had to create a document that would
23 show us what the deferrals would look like and what
24 the repayment periods would look like depending on
25 different terms we got with different lessors.

1 S. Sashikumar Bindu

2 Q. What was that document called, if you
3 know?

4 A. I think I called it interest calc file,
5 from memory.

6 Q. Did you prepare that document for each of
7 your lessors or was it one document for many
8 lessors?

9 A. It was one document that had all of our
10 lessors' individual tabs in it.

11 Q. Do you recall including any information
12 about the 14 original leases with AMCK in that
13 interest calc file?

14 A. I'm sure AMCK was part of the file
15 because, again, it was a model built to analyze what
16 the interest would be with deferring rent payments.

17 Q. So the interest calc file would show --
18 strike that.

19 The interest calc file reflected your
20 calculations of what interest payments would have
21 been if there were a deferral for any number of
22 lessors; is that correct?

23 A. Yes.

24 Q. Was there any document that you managed
25 that indicated the payment dates for any AMCK 14

1 S. Sashikumar Bindu

2 financial terms of those agreements?

3 A. Yes.

4 Q. The interrogatory goes on stating,
5 "Plaintiff claims damages related to its agreements
6 with CDB Aviation and Jackson Square Aviation, which
7 agreements specifically reduced purchase price per
8 aircraft, increased rent per aircraft, and provided
9 less favorable return condition provisions, less
10 favorable early termination options and less
11 favorable on-watch burden."

12 Do you see that?

13 A. Yes.

14 Q. What I'd like to do is go through each of
15 those items one at a time.

16 So the first item listed there is an
17 increased -- strike that.

18 The first items listed there is a reduced
19 purchase price per aircraft.

20 Do you see that?

21 A. Yes.

22 Q. What does that mean?

23 A. It means, compared to what the purchase
24 price would have been under AMACK -- or AMCK --
25 please strike that.

1 S. Sashikumar Bindu

2 Compared to the purchase price with AMCK,
3 the purchase price we got with CDB Aviation and
4 Jackson Square were reduced under the sale-leaseback
5 agreement.

6 Q. Do you recall what purchase price AMCK
7 had agreed to pay?

8 A. I believe it was 51 million.

9 Q. Do you recall what purchase price CDB
10 Aviation agreed to pay?

11 A. 48 and-a-half million.

12 Q. How about Jackson Square Aviation?

13 A. I believe they were 49 million.

14 Q. You said it's a reduced purchase price in
15 connection with the sale-leaseback transaction.

16 What was being purchased?

17 A. The lessor is purchasing the aircraft
18 from us to lease it back to us.

19 Q. So the purchase price was an amount that
20 would have been paid to Frontier?

21 A. In a manner of speaking, yes.

22 Q. You said in a manner of speaking. Would
23 you put it in different words?

24 A. Typically, Airbus is involved in the
25 transaction, as well, when we take delivery of the

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2 aircraft. The sale-leaseback happens as of closing
3 with Airbus. So it happens as a facet of the
4 payment that would have to go to Airbus and the
5 payment that the lessor is making to us. And so
6 those happen at the same time when we do the
7 sale-leaseback transaction.

8 Q. So an increased purchase price would
9 generate more profit for Frontier on a transaction;
10 is that right?

11 A. Correct.

12 Q. And decreased purchase price would result
13 in lower profit on a transaction; correct?

14 A. Correct.

15 Q. The next item that's listed here is an
16 increased rent per aircraft.

17 Do you see that?

18 A. Yes.

19 Q. What does that item of damage to Frontier
20 mean?

21 A. It means the monthly rent we would have
22 paid AMCK would have been significantly less than
23 the monthly rent we would pay -- or ended up paying
24 with CDB Aviation and Jackson Square Aviation.

25 Q. So the monthly rent for the lease

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2 agreements with CDB Aviation is a higher monthly
3 rent than that under the leases with AMCK?

4 A. That's correct.

5 Q. And the monthly rent on the lease
6 agreements with Jackson Square Aviation is a higher
7 monthly rent than the rent would have been with
8 leases with AMCK; is that correct?

9 A. That's correct.

10 Q. Those monthly rent amounts are paid on a
11 monthly basis going forward; is that right?

12 A. Yes.

13 Q. Frontier didn't pay all that monthly
14 rental amount upfront, did it?

15 A. No.

16 Q. How long is the term of the CDB Aviation
17 leases?

18 A. 144 months.

19 Q. And how long is the term of the Jackson
20 Square Aviation leases?

21 A. 144 months, as well.

22 Q. So the higher monthly rent amount is paid
23 over the life of that 144-month term; correct?

24 A. Yes.

25 Q. The next item on the list here is less

1 S. Sashikumar Bindu

2 favorable return condition provisions.

3 Do you see that?

4 A. Yes.

5 Q. What does that mean?

6 A. In general, you have to return the
7 aircraft at a certain condition at the end of every
8 lease back to your lessor. Not all of it equates
9 directly to payments you would make, but more so
10 some of them could be an increased burden at the end
11 of the lease when we have to return the aircraft
12 with certain specific conditions to restore the
13 airplane in a certain way. And when you compare the
14 return condition provisions we negotiated with AMCK
15 to what we ended up with with CDB Aviation and
16 Jackson Square, they were less favorable compared to
17 AMCK.

18 Q. Do you know which specific conditions
19 were less favorable?

20 A. I don't recall which exact provision it
21 is, no.

22 Q. Have you calculated any dollar amount of
23 harm related to those return conditions?

24 A. Not directly and, not to skip a step, but
25 only with -- as it relates to the on-watch burden

1 S. Sashikumar Bindu

2 that is listed there, as well, which is one of the
3 return conditions under those deals.

4 Q. The third item we're looking at here,
5 less favorable term conditions, that would actually
6 include the last item on the list, the less
7 favorable on-watch burden; is that right?

8 A. Yes.

9 Q. You said you did calculate a dollar
10 amount regarding on-watch burden?

11 A. Yes, as it related to CDB Aviation.

12 Q. What is an on-watch burden?

13 A. So, it's more to do with how the trend of
14 the engines installed on the aircraft are at the end
15 of the lease and directly linking that to what the
16 return condition of that engine needs to be at the
17 end. So it's a probability item that you have to
18 consider that says there is a chance that this
19 engine could be a bad trend that could result in us
20 having that burden. So I think in the damages what
21 we've assumed was that that burden would be
22 something we'd get on one of the aircraft of the
23 three that we had with CDB because we did a three
24 aircraft sale-leaseback with them, which is what
25 you'll see in the damages for them.

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2 Q. Did you have any reason to believe that
3 the engine could be bad or this is just an estimate
4 of what might happen?

5 A. It's based on experience and what we
6 think could happen.

7 Q. Do you have any understanding currently
8 that there is a problem with the engines for any of
9 these leases?

10 A. We have ongoing issues with the engines
11 that we work with the manufacturers on. So it
12 becomes an expectation, frankly, in a 12-year lease
13 term on what the engine is going to look like in
14 12 years' time.

15 Q. What about the on-watch provisions
16 related to the CDB Aviation leases are worse than
17 the leases with AMCK would have been?

18 A. CDB Aviation had a specific carve-out
19 that related to on-watch as far as the expectation
20 of the engine being in a certain way at return,
21 which, as I recall, were not part of the AMCK lease.
22 And so it creates an increased burden.

23 Q. Did you calculate a dollar amount
24 associated with that increased burden?

25 A. Yes.

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2 Q. What is that amount?

3 A. I don't recall the exact dollar amount,
4 but I think it's part of the calculations that were
5 submitted.

6 Q. We have covered the reduced purchase
7 price, the increased rent, and less favorable return
8 conditions. Let's look at the next item on the
9 list: Less favorable early termination options.

10 Do you see that?

11 A. Yes.

12 Q. What does that refer to?

13 A. The AMCK deal had a provision for an
14 early termination option at the end of year 8 for
15 those leases and that option was not part of the
16 agreements with CDB Aviation and Jackson Square
17 Aviation.

18 Q. The early termination option was an
19 option that Frontier had under the AMCK leases?

20 A. Yes.

21 Q. Did you calculate a dollar amount
22 associated with the harm from less favorable early
23 termination options?

24 A. I don't believe so, no.

25 Q. In the next sentence, the response

1 S. Sashikumar Bindu

2 states, "Damages associated with plaintiff's
3 agreement with CDB Aviation, total approximately
4 \$31,313,400."

5 Do you see that?

6 A. Yes.

7 Q. So that that figure reflects the five
8 items of damages that we just went through?

9 A. Yes.

10 Q. As to the increased rent per aircraft, do
11 you know if that amount is discounted to present
12 value in this figure?

13 A. In this figure, I don't believe so, no.

14 Q. Do you know if the increased rent per
15 aircraft were discounted to present value what the
16 damages associated with plaintiff's agreement with
17 CDB Aviation would be?

18 A. I don't offhand, but I think that was
19 part of the file that was provided, as well.

20 Q. The interrogatory then states, "Damages
21 associated with plaintiff's agreement with Jackson
22 Square Aviation total approximately \$21,866,100."

23 Do you see that?

24 A. Yes.

25 Q. Does that include all of the items of

1 S. Sashikumar Bindu

2 damages we discussed above?

3 A. Yes.

4 Q. As to increased rent amount, is that
5 figure discounted to present value in that
6 \$21.8 million figure?

7 A. Not in that number, no.

8 Q. Taking the damages from the CDB Aviation
9 agreement and the Jackson Square Aviation agreement,
10 it looks like approximately over 53 -- a little over
11 \$53 million.

12 Is that roughly right?

13 A. Yes.

14 Q. In the next sentence it says, "Plaintiff
15 incurred such damages in or around June 2020."

16 Do you see that?

17 A. Yes.

18 Q. I believe you explained earlier that the
19 Jackson Square Aviation contract wasn't entered
20 until later in 2020; is that correct?

21 A. My recollection of it.

22 Q. So Frontier's damages associated with the
23 Jackson Square Aviation agreements actually came
24 later than June; is that right?

25 A. Again, I may be wrong, but my

1 S. Sashikumar Bindu

2 recollection of it, yes.

3 MR ALEXANDER: Let's put up the next
4 exhibit, which will be Exhibit 24. It's a
5 document with Bates Number Frontier 008478.

6 (Sashikumar Exhibit 24, 10/7/20 email
7 with attachment; 2 pages, marked for
8 identification.)

9 Q. This is an email from you to Spencer
10 Thwaytes and copying Robert Fanning, the subject,
11 "AMCK damages."

12 Do you see that?

13 A. Yes.

14 MR ALEXANDER: Can we go to the next
15 page, please.

16 Q. You referred to a damages file earlier.
17 Is this the file you were talking about?

18 A. Yes.

19 Q. In the top left of this document, it
20 looks like a chart that compares the AMCK, CDB, and
21 JSA contracts; is that right?

22 A. Yes.

23 Q. And JSA is Jackson Square Aviation?

24 A. That's correct.

25 MR ALEXANDER: Let's put up the next

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2 document, which will be Exhibit 25, which is an
3 enlarged version of this chart. And we may
4 already have that up on the screen.

5 (Sashikumar Exhibit 25, damages document,
6 marked for identification.)

7 Q. This enlarged document is Exhibit 25.
8 What I'd like to do, Mr. Sashikumar is walk through
9 this chart a little bit.

10 On the left column, it shows thousands of
11 dollars per aircraft, rent and PP only.

12 Do you see that?

13 A. Yes.

14 Q. And then below that is purchase price and
15 below that is B/W to AMCK.

16 Do you see that?

17 A. Yes.

18 Q. B/W, does that mean better or worse?

19 A. That's correct.

20 Q. So in this purchase price section of the
21 chart, it shows a purchase price for AMCK of
22 \$51 million times five aircraft, and a purchase
23 price for CDB of \$48.5 million for three aircraft,
24 and a purchase price of \$49 million for JSA with two
25 aircraft.

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2 Is that right?

3 A. Correct.

4 Q. Those are the figures you use to
5 calculate the reduced purchase price figure we spoke
6 about earlier; is that right?

7 A. That's correct.

8 Q. In the next section of the chart, it
9 shows, in the first several lines there, rent
10 amounts. So there's a final eight-year rent for the
11 AMCK contracts.

12 What does that mean?

13 A. It's the effective rent that we would
14 have paid under the AMCK contract.

15 Q. What do you mean by "effective rent"?

16 A. There is a swap rate adjustment metric in
17 the lease agreements based on base rent and an
18 adjustment based on swap rates that get you to an
19 effective rent.

20 Q. Below that is a reference to four-year
21 extension rent for the AMCK contracts.

22 What does that refer to?

23 A. It refers to basically a rent that we
24 would have been able to negotiate with them for the
25 last four years of the lease, again, based on our

1 S. Sashikumar Bindu

2 experience for an airplane that's eight years old at
3 the time and what we think will be a conservative
4 number for that four-year rent.

5 Q. The next row shows final 12-year rent,
6 and this row only applies to CDB and JSA; correct?

7 A. Yes.

8 Q. What does the information in this row
9 refer to?

10 A. It refers to the final rent amounts under
11 the CDB agreement and the Jackson Square agreement
12 for the 12-year lease we have with them.

13 Q. So those are monthly rent amounts
14 reflected there?

15 A. Yes.

16 Q. So, for the CDB agreements, the monthly
17 rent was approximately 315,000 and change; is that
18 right?

19 A. That's correct.

20 Q. And for JSA, it's approximately 325,000
21 and change; is that right?

22 A. That's correct.

23 Q. Below that is a row for nominal rent.

24 Do you see that?

25 A. Yes.

1 S. Sashikumar Bindu

2 Q. And that lists figures for each of the
3 AMCK, CDB, and JSA contracts, right?

4 A. Correct.

5 Q. And that is just the sum of all rent owed
6 over the life of the contract; is that right?

7 A. Yes.

8 Q. In the next row, it shows nominal better
9 or worse to AMCK and it shows for CDB Aviation
10 approximately \$7.4 million worse in connection with
11 the CDB contracts and approximately \$8.9 million
12 worse in connection with the JSA contracts; is that
13 right?

14 A. Yes.

15 Q. And then below that is a row for NPV
16 rent.

17 Does NPV refer to net present value?

18 A. It does.

19 Q. And it lists figures for each of the
20 contracts there; is that right?

21 A. Yes.

22 Q. And the row below that, it shows net
23 present value better or worse to AMCK, and it shows
24 for the CDB contracts, those are approximately
25 \$4.1 million worse than the AMCK contract; right?

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2 A. Yes.

3 Q. And for JSA, it's approximately
4 \$4.9 million worse than the AMCK contract; correct?

5 A. Yes.

6 Q. Below that is a reference to on-watch
7 burden, which you testified about earlier.

8 A. Yes.

9 Q. And for the on-watch burden nominal,
10 there's a \$475,252 figure; is that right?

11 A. Yes.

12 Q. And that's the amount you calculated
13 based on your estimate of the different on-watch
14 burden terms of the CDB contracts; is that right?

15 A. That's correct.

16 Q. The next is on-watch burden NPV, which
17 includes a figure of \$143,857.

18 Do you see that?

19 A. Yes.

20 Q. And that's the on-watch burden discounted
21 to present value; right?

22 A. Correct.

23 Q. Because this is an issue that would only
24 arise at the end of the lease term if it arises,
25 correct?

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2 A. That's correct.

3 Q. In the section below that, it shows
4 thousands per aircraft, rent and PP only, and it
5 shows nominal and NPV totals better or worse for the
6 CDB and JSA contracts; is that right?

7 A. Yes.

8 Q. In the section below that, it shows a
9 similar calculation but for five aircraft.

10 Do you see that?

11 A. Yes.

12 Q. And it shows that the CDB contracts were
13 at a nominal total \$31,313,440.04 worse than the
14 AMCK contracts; is that right?

15 A. Around \$0.40, but, yes.

16 Q. Oh. Yes. Noted.

17 And then, for the JSA contracts, it shows
18 a nominal total of \$21,866,107.50 worse than the
19 AMCK contracts; is that right?

20 A. Yes.

21 Q. So the nominal total better or worse to
22 AMCK is negative \$53,179,547.80; is that right?

23 A. Yes.

24 Q. So that's roughly the figure in the
25 interrogatory response that totaled about

1 S. Sashikumar Bindu

2 \$53 million; is that right?

3 A. That's correct.

4 Q. In the row below that, it shows NPV total
5 better or worse to AMCK, and it shows that the CDB
6 contracts are worse by \$21,329,485.80; is that
7 right?

8 A. 20,329,000, but yes.

9 Q. For the JSA contracts, the chart shows
10 that those are \$13,974,244.90; is that right?

11 A. Yes.

12 Q. So the total net present value amount by
13 which those contracts are worse than the AMCK
14 contracts in your calculation are \$34,303,730.80; is
15 that correct?

16 A. Yes.

17 Q. There's a note below this chart which
18 says, "Note: Discount rate is assumed to be
19 10 percent."

20 Do you see that?

21 A. Yes.

22 Q. Is 10 percent the standard rate you use
23 to discount to net present value?

24 A. Typically, yes.

25 Q. It says in the line below that, "Return

CERTIFICATE

STATE OF NEW YORK)

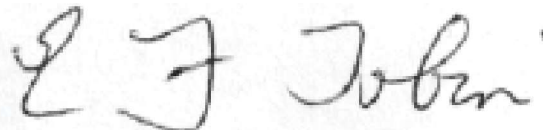
) ss.

COUNTY OF SUFFOLK)

I, Elizabeth F. Tobin, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That Sharath Sashikumar Bindu, the witness whose deposition is hereinbefore set forth, was duly sworn by me remotely and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.



ELIZABETH F. TOBIN, RPR